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Before the
Federal Communications Commission
Washington, D.C. 20554

DISPATCHED BY

MM Docket No. 93-316

In the Matter of

Amendment of Section 73.202(b), RM-8403
Table of Allotments, RM-8576
FM Broadcast Stations.
(Douglas, Tifton and Unionville Georgia)¹

REPORT AND ORDER
(Proceeding Terminated)

Adopted: July 5, 1995;

Released: July 17, 1995

By the Chief, Allocations Branch:

1. At the request of Orchon Media, Inc. ("Orchon"), permittee of Station WKZZ(FM), Channel 223A, Douglas, Georgia, the Commission has before it for consideration the *Notice of Proposed Rule Making*, 9 FCC Rcd 154 (1994), proposing the substitution of Channel 223C3 for Channel 223A at Douglas, Georgia, the reallocation of Channel 223C3 from Douglas to Unionville, Georgia, and the modification of the construction permit for Station WKZZ(FM) to specify Unionville as its community of license. Orchon filed comments and a counterproposal.² Tifton Broadcasting Corporation ("TBC"), licensee of Station WTIF(AM), Tifton, Georgia, and WJYF(FM), Nashville, Georgia, and Clyde J. Scott, Jr., D/B/A, EME Communications ("EME") filed comments. In response to the counterproposal Tifton filed reply comments.

2. TBC, in its comments, argues that Unionville is not a "community" for allotment purposes. TBC's President, Ronald Griffin, contends that Unionville does not exist as a separate community, but is actually a part of Tifton, Georgia. TBC argues the mere fact that Unionville is listed in *Rand McNally Commercial Atlas* as a "Census Designated Place" ("CDP") is not conclusive. TBC goes on to state that the Commission must look at the totality of circumstances to determine whether an area qualifies as a "community." TBC asserts that there is no evidence that Unionville has its own business, social and organizational units, citing *Rockport, Texas*, 67 RR 2d 176 (1989). TBC further argues that Unionville does not possess any social, economic or cultural components that are commonly associated with community status. Therefore, TBC contends that Orchon's proposal should be denied.

3. EME also filed comments arguing that Unionville is not a community for allotment purposes. EME asserts that there are no city limit signs to indicate Unionville, nor are

there any identification markings of any kind. There are no provisions in the Tifton County telephone book indicating any numbers in Unionville. EME submits letters from the Tifton County Board of Commissioners and the U.S. Postal Service, both indicate that Unionville is a part of Tifton, Georgia.

4. The *Notice* questioned the status of Unionville as a community for allotment purposes, and requested Orchon to present information demonstrating that Unionville has sufficient social, economic, cultural, and governmental indicia to qualify it as a community for allotment purposes. Orchon in its comments and counterproposal states that since Unionville, Georgia, was designated by the U.S. Census as a CDP, it believed that such a listing nevertheless served to demonstrate that Unionville is in fact a "geographic identifiable population grouping." Orchon contends that the Commission has specifically held that being listed as a CDP is enough for allotment purposes, citing *Pierce, et al. Texas*, 8 FCC Rcd 3528, 3530 (1993). Orchon argues that the sheer size of Unionville (population 2,710) more than qualifies it as a community for allotment purposes. However, Orchon has concluded that new service can best be provided by the reallocation of Channel 223C3 from Douglas, Georgia to Tifton, Georgia, a community whose status is beyond question. Orchon states that the reallocation of Channel 223C3 from Douglas to Tifton would represent a preferred arrangement of allotments consistent with, *Revision of FM Assignment Policies and Procedures*, 90 FCC 2d 88, 51 RR 2d 802 (1982).³ Orchon argues that its proposal would not involve either gain or loss of first full-time aural service, second full-time aural service, or first local service. Thus, the Commission's fourth allotment criteria, "Other public interest matters", govern the merits of this case. In that regard Orchon contends that the areas represented by theoretical coverage of Douglas, Georgia, on Channel 223A and Tifton, Georgia, on Channel 223C3 both currently receive coverage from numerous radio stations during both daytime and nighttime hours. Further, Orchon states that the reallocation of Channel 223C3 from Douglas to Tifton would not result in the loss of Douglas's first or second local service.

5. Orchon states that since Station WKZZ at Douglas, Georgia is an unbuilt station, it does not represent service on which the public has come to rely on, and will not cause any disruption to existing service, citing *Glencoe and LeSueur, Minnesota*, 7 FCC Rcd 7651 (1992); and *Pawley's Island and Atlantic Beach, South Carolina*, 8 FCC Rcd 8657 (1993). Therefore, the Commission need not weigh the loss or disruption of existing service against "theoretical" gains in service. Orchon also contends that there would be no creation of unserved or underserved areas should the Commission adopt its proposal. Orchon submits that it has studied the gain and loss area for Station WKZZ(FM) if Channel 223C3 is substituted for 223A at Douglas, Georgia, and reallocated to Tifton, Georgia. Orchon states that an area of 3,942 square kilometers within a population of 84,204 persons will gain new reception service based on its proposed reallocation, while an area of 1,721 square kilometers within a population of 31,226 persons would

¹ The community of Tifton, Georgia, has been added to the caption.

² Public Notice of the counterproposal was given on January 18, 1995, Report No. 2052 (RM-8576).

³ The allotment priorities are: (1) first full-time aural service; (2) second full-time aural service; (3) first local service; and (4) other public interest matters. [Co-equal weight given to priorities (2) and (3)].

theoretically lose "existing" service. Orchon argues that its proposal represents a net gain of 2,221 square kilometers and 52,978 persons who would receive new service. Orchon states its intention to apply for Channel 223C3 at Tifton, Georgia, if allotted.

6. In its reply comments, Orchon notes that both TBC and EME challenge the status of Unionville as a community for allotment purposes. Orchon states that their concerns have been mooted by its counterproposal requesting the substitution of Channel 223C3 for Channel 223A at Douglas, and the reallocation of Channel 223C3 from Douglas to Tifton.

7. In response to the counterproposal, TBC argues that even though Orchon's new FM station is not yet built and operational, it does not change the fact that Douglas will be losing one of its media voices, if Orchon's proposal is approved. TBC contends that Orchon would not be able to provide city grade coverage to the entire community of Douglas from its proposed tower site northeast of Tifton as required by §73.315 of the Commission's rules. Therefore, TBC argues that Orchon is "community shopping," seeking to find a city or town to designate as its station's community of license, while at the same time satisfying the Commission's city grade coverage rule. TBC further contends that Orchon is not serious about serving the citizens of Tifton and that it is merely seeking a community that will fit its stations' engineering needs. Tifton further argues that Orchon has not shown that it is precluded from upgrading its FM station on Channel 223A at Douglas. TBC also argues that in *Modification of FM and TV Authorizations (New Community of License)*, 4 FCC Rcd 4870 (1989), *recon. granted in part*, 5 FCC Rcd 7094 (1990), the Commission concluded that its previous policy of permitting a station to change its community of license precluded beneficial upgrades. Therefore, they modified the policy to protect licensees seeking to change their community of license, from outside expressions of interest, thereby licensees would be allowed to propose upgrades that would not otherwise be available. Finally, TBC states that Orchon has failed to show why the reallocation of Channel 223C3 from Douglas, Georgia, to Unionville, Georgia is necessary.

8. We believe that the substitution of Channel 223C3 for Channel 223A at Douglas, Georgia, the reallocation of Channel 223C3 from Douglas to Tifton, Georgia, and the modification of Station WKZZ(FM)'s construction permit to specify Tifton as its community of license is in the public interest. In examining a change of community of license proposal, we must determine whether the proposal would result in a preferential arrangement of allotments pursuant to the Commission's change of community procedures. See *Modification of FM and TV Authorizations to Specify a New Community of License*, ("Change of Community R&O"), 4 FCC Rcd 4870 (1989), *recon. granted in part*, 5 FCC Rcd 7094 (1990) ("Change of Community MO&O"). In determining whether a proposed reallocation represents a preferential arrangement of allotments, we compare the existing arrangement of allotments with the proposed arrangement of allotments using our FM allotment priorities, see *supra*. In making this determination, we find that Tifton (population 14,215) would receive its "first competitive local FM service", which falls under priority four, and

Douglas (population 10,464) will continue to be served by full-time stations WDMG(AM), WDMG(FM), and WOKA(FM), and falls under priority four, "other public interest matters." We note that the proposed reallocation of Channel 223C3 to Tifton would result in a net gain of service to 50,578 persons within an area of 2,243 square kilometers (867 square miles), while the removal of Station WKZZ(FM) from Douglas will create a loss area to 29,537 persons within an area of 1,650 square kilometers (637 square miles). The analysis also shows that both the loss and gain areas for Douglas will continue to receive at least five full-time reception services, and therefore, are considered to be well-served areas. We find that the change in community of license will not cause any disruption to existing service since Station WKZZ(FM) has never been on the air. Finally, neither community is located within or near any Urbanized Area.

TECHNICAL SUMMARY

9. Channel 223C3 can be allotted to Tifton in compliance with the Commission's minimum distance separation requirements at petitioner's specified transmitter site, with a site restriction of 17.1 kilometers (10.7 miles) northeast of the community.⁴ In accordance with Section 1.420(i) of the Commission's Rules, we will modify the construction permit for Station WKZZ(FM) to specify Channel 223C3, Tifton, Georgia, as its community of license.

10. Accordingly, pursuant to the authority found in Sections 4(i), 5(c)(1), 303(g) and (r) and 307(b) of the Communications Act of 1934, as amended, and Sections 0.61, 0.204(b) and 0.283 of the Commission's Rules, IT IS ORDERED, That effective August 31, 1995, the FM Table of Allotments, Section 73.202(b) of the Commission's Rules, IS AMENDED for the communities listed below, as follows:

City	Channel No.
Douglas, Georgia,	258C1, ⁵ 294C1
Tifton, Georgia	223C3, 262C

11. IT IS FURTHER ORDERED, That pursuant to Section 316(a) of the Communications Act of 1934, as amended, the construction permit of Station WKZZ(FM), Channel 223A, Douglas, Georgia, IS MODIFIED, to specify operation on Channel 223C3, Tifton, Georgia, in lieu of Channel 223A, Douglas, Georgia, as its community license, subject to the following conditions:

- (a) Within 90 days of the effective date of this Order, the licensee shall submit to the Commission a minor change application for a construction permit (Form 301), specifying the new facility;
- (b) Upon grant of the construction permit, program tests may be conducted in accordance with Section 73.1620; and

⁴ The coordinates for Channel 223C3 at Tifton are North Latitude 31-31-05 and West Longitude 83-20-43.

⁵ On December 14, 1994, at the request of WDMG, Inc., licensee of Station WDMG(FM) that station was downgraded from Channel 258C to Channel 258C1 by application (BPH-940902ID).

(c) Nothing contained herein shall be construed to authorize a change in transmitter location or to avoid the necessity of filing an environmental assessment pursuant to Section 1.1307 of the Commission's Rules.

12. Pursuant to Commission Rule Section 1.1104(1)(k) and (2)(k), any party seeking a change of community of license of an FM or television allotment or an upgrade of an existing FM allotment, if the request is granted, must submit a rule making fee when filing its application to implement the change in community of license and/or upgrade. As a result of this proceeding, Orchon Media, Inc., is required to submit a rule making fee in addition to the fee required for the application to effect the upgrade and change of community.

13. IT IS FURTHER ORDERED, That this proceeding IS TERMINATED.

14. For further information concerning this proceeding, contact Nancy J. Walls, Mass Media Bureau, (202) 418-2180.

FEDERAL COMMUNICATIONS COMMISSION

John A. Karousos
Chief, Allocations Branch
Policy and Rules Division
Mass Media Bureau